



(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM

Counsel For The State Bar MONIQUE T. MILLER DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, California 90015-2299 213-765-1486	Case Number (s) 06-O-11089 <div align="center" style="border: 1px solid black; padding: 5px;">PUBLIC MATTER</div>	(for Court's use) <div align="center"> FILED JAN 11 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Bar # 212469 In Pro Per Respondent Bryan Thomas Castorina Thomas Castorina & Associates 3500 Overland Ave. Ste 110-102 Los Angeles, CA 90034 Tel.: (714) 351-7882	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
Bar # 162843 In the Matter Of: BRYAN THOMAS CASTORINA Bar # 162843 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 14, 1992.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 9 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
 - (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below:
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☒ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: BRYAN CASTORINA

CASE NUMBER(S): 06-O-11089

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND
STIPULATED FACTS AND CULPABILITY**

The parties hereby waive any variance between the Notice of Disciplinary Charges ("NDC") filed on October 2, 2008 in Case No. 06-O-11089, and the facts and conclusions of law contained in this stipulation.

Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to the case that is the subject matter of this stipulation.

INCORPORATION OF PRIOR STIPULATION

This stipulation is an addendum intended to supplement the Stipulation re: Facts and Conclusions of Law in Case Nos. 02-C-11140 and 04-C-10858, which the parties lodged with this Court on November 22, 2005 (the "Prior Stipulation"). The Prior Stipulation is also incorporated as if fully set forth herein.

FACTS AND CONCLUSIONS OF LAW IN CASE NO. 06-O-11089

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

FACTS

1. In January 2005, Heather Wineland ("Wineland") hired Respondent to file a lawsuit and prosecute her case against Thomas Gutierrez ("Gutierrez") relating to a dispute over real property owned by Wineland and Gutierrez. An oral agreement between Respondent and

Wineland provided that Respondent would be paid 30% of any amount Wineland recovered in the lawsuit.

2. Between February 2005 and April 2005, Wineland spoke with Respondent periodically about the status of her case and Respondent told Wineland that he was "handling everything" for her and to trust him.

3. Between May 2005 and July 2005, Wineland sent Respondent email messages at an email address Respondent had given to her. Between May 2005 and July 2005, Wineland also called Respondent and left him voice mail messages. Wineland's email messages and voicemail messages asked that Respondent contact her to inform her about the status of her case. Respondent received the email messages and voicemail messages, but did not communicate with Wineland.

4. On May 24, 2005 and May 27, 2005, William Boon ("Boon"), counsel for Gutierrez, served Respondent with a notice of taking Wineland's deposition and form interrogatories, respectively. The notice of taking deposition and form interrogatories were served on Respondent by mail. Respondent received both documents, but did not inform Wineland about them and did not respond to them on her behalf.

5. On June 1, 2005, Respondent called Boon and told him that he (Respondent) was unavailable on June 28, 2005, the date Boon had scheduled Wineland's deposition. Respondent told Boon that Respondent would contact him in order to reschedule the deposition. Respondent did not contact Boon to reschedule the deposition.

6. On June 27, 2005, Boon mailed a letter to Respondent in which Boon provided him with available dates for Wineland's deposition. Respondent received the letter, but did not communicate with Boon.

7. On July 12, 2005, Boon mailed another letter to Respondent in which Boon asked that Respondent contact him regarding Wineland's deposition and her outstanding responses to form interrogatories. In the letter, Boon also informed Respondent that if he did not hear from Respondent within 10 days of the date of his letter, he would move to compel Wineland's

deposition and responses to discovery. Respondent received the letter, but did not communicate with Boon.

8. On July 28, 2005, Boon filed a motion to compel Wineland to appear for her deposition and to respond to form interrogatories. The date set for the hearing on the motion was September 22, 2005. Respondent received the motion, did not tell Wineland about it, and did not file a response to it.

9. On August 31, 2005, Boon wrote a letter to Respondent in which he reminded Respondent that the motion to compel was scheduled for September 22, 2005. Boon asked Respondent to review the case with Wineland and to contact Boon in an attempt to resolve the matter. Respondent received the letter, did not inform Wineland about it, and did not communicate with Boon.

10. On September 14, 2005, Wineland wrote a letter to Respondent in which she asked for a copy of her file and to speak with Respondent regarding the status of her case. Respondent received the letter, but did not provide Wineland with a copy of her file.

11. Respondent never provided Wineland with her file.

12. Between September 14, 2005 and September 20, 2005, Respondent called Wineland once and left her a voicemail message asking to speak with her about her case. Approximately 20 minutes after Respondent left the phone message for Wineland, Wineland called Respondent back and left him a voicemail message asking him to return her call. Respondent received the message, but did not communicate with Wineland.

13. On September 20, 2005, Respondent, without Wineland's knowledge or consent, filed a dismissal of her case without prejudice. The motion to compel was then taken off calendar.

14. In early October 2005, Wineland hired attorney Donald Chomiak ("Chomiak") to represent her in her lawsuit against Gutierrez.

15. Between October 10, 2005 and October 18, 2005, Chomiak called Respondent and left him two voice mail messages in which he informed Respondent of his representation of Wineland, asked for a copy of Wineland's file, requested the status of the case, and requested to speak with Respondent regarding a substitution of attorney. Respondent received the messages, but did not communicate with Chomiak.

16. On January 18, 2006, the State Bar opened an investigation, Case No. 06-O-11089, pursuant to a complaint filed by Heather Wineland against Respondent ("Wineland complaint").

17. On March 27, 2005 and April 10, 2005, a State Bar Investigator wrote to Respondent regarding the Wineland complaint.

18. The March 27, 2005 and April 10, 2005 letters were properly mailed to Respondent at his State Bar of California membership records address. Respondent received the letters.

19. The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Wineland complaint.

20. At no time, did Respondent communicate with the investigator or provide a written response to the specified allegations of misconduct.

CONCLUSIONS OF LAW

21. By failing to respond to form interrogatories, the notice to produce Wineland for her deposition, and the motion to compel Wineland's deposition and discovery responses, and by dismissing Wineland's lawsuit without her knowledge or consent, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

22. By failing to respond to any of Wineland's telephone calls or emails in which she requested the status of her case, Respondent failed to respond to the reasonable status inquires of a client, in willful violation of Business and Professions Code section 6068(m).

23. By failing to tell Wineland that she had been served with a notice of taking her deposition and discovery, that Gutierrez moved to compel her deposition and discovery responses, and that he had dismissed her lawsuit against Gutierrez without prejudice, Respondent failed to keep a client reasonably informed of significant developments in willful violation of Business and Professions Code section 6068(m).

24. By failing to provide Wineland or her subsequent counsel, Chomiak, with her file, Respondent failed to release his client's file promptly, in willful violation of rule 3-700(D)(2), Rules of Professional Conduct.

25. By not providing a written response to the investigator's letters regarding the allegations in the Wineland complaint or otherwise cooperate in the investigation of the Wineland complaint, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code, section 6068(i).

RULE 133 NOTICE OF PENDING PROCEEDINGS

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on August 13, 2009.

POTENTIAL INCREASE IN DISCIPLINE

Respondent understands that the matter in this addendum, being additional misconduct, may result in the Office of Chief Trial Counsel seeking – and/or the State Bar Court recommending – additional ADP conditions or increased discipline in the underlying cases. In addition, his length of participation in the court's Alternative Discipline Program may be extended.

(Do not write above this line.)

In the Matter of
BRYAN THOMAS CASTORINA

Case number(s):
06-O-11089


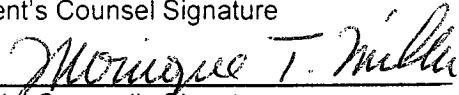
SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>9-2-09</u> Date	 Respondent's Signature	Bryan T. Castorina Print Name
<u>Sept 2, 2009</u> Date	 Respondent's Counsel Signature	Monique T. Miller Print Name
	<u>Deputy Trial Counsel's Signature</u>	

(Do not write above this line.)

In the Matter Of BRYAN THOMAS CASTORINA	Case Number(s): 06-O-11089
---	--------------------------------------

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☐ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

1-7-10

Date



Judge of the State Bar Court

RICHARD A. HURN

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 11, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

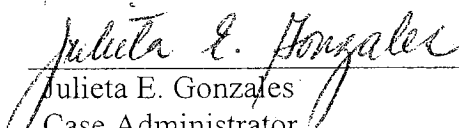
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRYAN T CASTORINA ESQ
THOMAS CASTORINA & ASSOCIATES
3500 OVERLAND AVE STE 110-102
LOS ANGELES, CA 90034

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Monique T. Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 11, 2010.



Julieta E. Gonzales
Case Administrator
State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 21, 2010, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS;
STIPULATION RE FACTS AND CONCLUSIONS OF LAW, CASE NOS.
02-C-1140-RAH; 04-C-10858-RAH;
STIPULATION RE FACTS AND CONCLUSIONS OF LAW, CASE NO. 06-O-11089;
and
STIPULATION RE FACTS AND COCLUSIONS OF LAW, CASE NO. 08-O-12305

in a sealed envelope for collection and mailing on that date as follows:

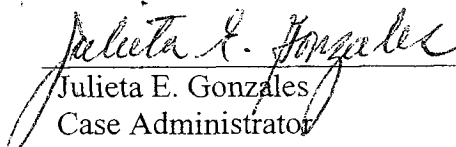
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRYAN T CASTORINA ESQ
THOMAS CASTORINA & ASSOCIATES
3520 OVERLAND AVE STE A-102
LOS ANGELES, CA 90034

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Monique T. Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 21, 2010.


Julieta E. Gonzales
Case Administrator
State Bar Court